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UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/488,182	01/20/2000	Eric Jonathan Bauer	13-7-4	4052

7590	02/25/2004

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EXAMINER
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ART UNIT	PAPER NUMBER
2666	

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Advisory Action	09/488,182	BAUER ET AL.
	Examiner	**Art Unit**	
	Ronald Abelson	2666	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may <u>only</u> be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

<u>PERIOD FOR REPLY</u> [check either a) or b)]

a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

    (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

    (b) ☐ they raise the issue of new matter (see Note below);

    (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.
        NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet.*

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) *Response* a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: *3,6,9,and 12.*

    Claim(s) rejected: *1,2,4,5,7,8,10 and 11.*

    Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

Seema S. Rao
SEEMA S. RAO 2/23/04
SUPERVISORY PATENT EXAMINER
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Continuation of 5. does NOT place the application in condition for allowance because: Applicant states, "there is a significant difference between the monitoring of the QoS parameters taught by Cruickshank and the monitoring of congestion, as required by the present invention" (applicant: pg. 3 lines 5-7). The examiner disagrees. Both the examiner and applicant agree that Cruickshank monitors QoS parameters such as packet delay, packets dropped and throughput. The examiner maintains that the measurement of throughput can be a measurement of congestion. Note, Cruickshank teaches that the delays are assumed due to congestion (col. 2 lines 46-49).

The applicant states, "Cruickshank does not disclose or suggest a "congestion indicator" or "congestion data" as required in independent claims 1,4,7, and 10" (applicant: pg. 4 lines 8-9). The examiner disagrees. As previously noted, the delays are assumed due to congestion. The "congestion indicator" of Cruickshank is the information that informs the PBX that the QoS has dropped below a threshold (Cruickshank (col. 2 lines 37-40). Therefore, the examiner maintains that the limitation "a congestion indicator status associated with each path in said primary network, said congestion indicator indicating wheter said path is congested", applicant pg. 4 lines 1-2, is found in Cruickshank. Regarding the limitation, "a congestion indicator flag associated with said path if said congestion data indicates that a path associated with said packet telephony communication is congested" (applicant: pg. 4 lines 3-5), the examiner corresponds the congestion indicator flag of the applicant with the means of storing in the PBX of Cruickshank that the path is congested. Regarding the limitation, "reporting said congestion data to a centralized server that performs overload control, whereby said centralized server evaluated said congestion data to determine if a path associated with said packet telephony communication is congested" (applicant: pg. 4 lines 5-7), the examiner corresponds the centralized server of the applicant with the PBX of Cruickshank.

Regarding the applicant's assertion that claims 2,5,8, and 11 are allowable since they are dependent upon independent claims 1,4,7, and 10, the examiner disagrees that the independent claims are allowable (see prior paragraphs).